**C.R.No.182/06**

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH**

S.B. CIVIL REVISION PETITION NO.182/2006

D.K. Mishra **Versus** Ramji Lal & Ors.

DATE OF ORDER :: 07/12/2006

**HON'BLE MR. JUSTICE AJAY RASTOGI**

Mr. Bipin Gupta, for petitioner

***

Instant revision petition has been filed by one of the defendants-petitioners against the order dated 23rd May, 2000 whereby the suit filed by the non-petitioner-plaintiff No.1 was allowed whereby the defendant-petitioner was directed to pay a sum of Rs.14,500/- along with interest @9%. Against which, the petitioner filed appeal that too met with the same fate of rejection vide order dated 15th July, 2006. Hence, this revision petition.

The suit was filed by the non-petitioner-plaintiff No.1 for making recovery of a sum of Rs.10,000/- along with interest from the petitioner-defendant as well with the specific statement made that a sum of Rs.10,000/- was deposited by him on 29th July, 1988 of which he holds a counter slip, but the same was not debited in his account and despite the fact that his loan amount has been finally settled, still a sum of Rs.10,000/-, which he deposited on 29th July, 1988, has not been properly debited in his account and he is entitled for its refund. This fact is not disputed that a counter

slip was duly signed under the signatures of present petitioner, who was Manager of the Bank at the relevant time.

Learned trial Judge after taking into consideration the material which has come on record, recorded a finding that the counter slip has been issued by the defendant-petitioner but a sum of Rs.10,000/- deposited by the plaintiff on 29th July, 1988 was not debited in his Loan Account and document to this effect which he wants to place on record at a later stage by submitting application under O.13 R.2 CPC, was rejected by the learned trial Judge by passing a detailed order on 5th October, 1996 and finally it was held that since the amount has not been debited in his Loan Account, which was stated to be deposited by the plaintiff on 29th July, 1988 and the present petitioner being Manager of the Bank at the relevant time, who accepted the money in his personal capacity alone was held liable to pay/refund the same along with interest vide order impugned dated 23rd May, 2000 at the stage of appeal also same submissions were reiterated by the petitioner and the Appellate Court also concurred with the finding recorded by the learned trial Judge and upheld the order by rejecting the appeal.

Counsel for petitioner submits that after rejection of his application filed under O.13 R.2 CPC, he raised objection at the stage of appeal and also filed application under O.41 R.27 CPC, but that has not been considered by the learned Appellate Court while passing order impugned dated 15th July,

2006. Counsel further submits that the action of the petitioner was in his official capacity as Manager of the Bank and if at all the money is said to be refunded to the plaintiff, the liability could not have been fastened upon the petitioner as the Bank alone is to be held responsible, but this has not been properly appreciated by both the courts below and the liability has been fastened upon the petitioner in his personal capacity despite the fact that he is a retired personnel and not holding public office on the date decree was passed against him.

I have considered the submission of the counsel and perused the finding recorded under the order impugned.

This fact remain undisputed and has not been disputed by the counsel for petitioner at this stage that a counter slip of a sum of Rs.10,000/- dated 29th July, 1988 was duly signed by the petitioner which was placed on record and exhibited before the learned trial Judge. Only fact which has come forward that the said amount was refunded to the present plaintiff-respondent and the receipt thereof could not have been brought on record despite his best efforts for which application was filed initially under O.13 R.2 CPC and at a later stage under O.41 R.27 CPC, but the court has not appreciated the same.

In my considered opinion, learned trial Judge has passed a detailed order rejecting application and sufficient reasons have been assigned for

rejecting his application filed under O.13 R.2 CPC and I have gone through the order which was shown to me where it has been observed that the present petitioner failed to file his written statement and for the first time on 20th September, 1996 from his personal record he was able to get a receipt duly signed by the plaintiff. This explanation, which the petitioner took for placing document on record, itself seems to be an after thought and rightly denied by the court below. Even if there is no proper appreciation, I find that it has not caused any prejudice to the petitioner, particularly, when the cogent material has come on record in support thereof holding that he was the officer of the Bank at the relevant time accepted the money of Rs.10,000/- from the plaintiff and the said amount does not find place in statement of accounts maintained by the Bank.

I have gone through the finding recorded by both the courts below and which is duly supported by material on record, does not require interference under the limited jurisdiction of this court u/s.115 CPC.

Consequently, the revision petition fails and is hereby dismissed.

**[AJAY RASTOGI],J.**

FRBOHRA,JR.P.A.